

## NEW HAMPSHIRE REAL ESTATE COMMISSION

### COMMISSION MEETING

MAY 13, 2003

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, May 13, 2003 at 9:00 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 9:00 a.m. by Chairman ARTHUR SLATTERY

Present: Commissioners ARTHUR SLATTERY, MARTIN SMITH, BARBARA HEATH, PAULINE IKAWA, NANCY LeRoy, Executive Director BETH EMMONS, and Investigator ANN FLANAGAN.

- I. Motion by Commissioner SMITH, seconded by Commissioner LeRoy, to approve and accept the minutes of the Commission meeting held on April 15, 2003.

II. **APPOINTMENTS**

9:00 a.m. - Equivalency Interviews

| <u>CANDIDATE</u> | <u>COMMISSIONER</u> | <u>DETERMINATION</u> |
|------------------|---------------------|----------------------|
| TOM HARTLEY      | IKAWA               | DENIED               |
| DOUG SMITH       | SMITH               | DENIED               |

9:30 a.m. – KATHY ROOSA & ALAN ROY of Kathy Roosa School of Real Estate appeared before the Commission to explain a proposed 10 hour optional addition to their 30 hour pre-licensing course. The additional 10 hours will consist of a minimum of 644 questions. The students will be required to answer a certain number of questions each week of Ms. Roosa's pre-licensing course. Questions will be turned in at each subsequent class and the answers will be supplied to the student to review and have the opportunity to ask additional questions. The school will now offer a 30 hour and a 40 hour pre-licensing course. The 10 hours will not be a separate course, and will not be allowed apart from the original 30 hour course.

III. **DISCUSSION**

HEATHER BOISSONNEAU requested the Commission to accept a withdrawal of Complaint FILE NO. 2003-01-02 HEATHER BOISSONNEAU VS HAMPSEY AND GRENIER ASSOCIATIES. After review and discussion, the Commission unanimously decided to accept the request to withdraw, and directed the Commission Investigator to initiate a parallel complaint to File No. 2003-01-02. The parties to the complaint to be so notified.

GARY HOBBS requested the Commission to accept a withdrawal of Complaint FILE NO. 2002-12-01 GARY HOBBS VS SCOTT GODZYK. After review and discussion, the Commission unanimously decided to accept the request to withdraw. The parties to be so notified.

V. **OTHER BUSINESS**

1. Tuesday, June 17, 2003, was unanimously approved as the date for the next regular meeting.

2. CASE EVALUATIONS

(a) **FILE NO. 2002-07-04**

Evaluator: Commissioner LeRoy

Determination: Should be heard, hearing to be scheduled. In the alternative, the Commission unanimously approved to offer the Respondent a Settlement Agreement with a disciplinary fine in the amount of \$225.00.

(b) **FILE NO. 2002-08-01**

Evaluator: Commissioner HEATH

Determination: No violation, should not be heard.

The above determinations were unanimously approved.

3. ORDER

The following Order was issued by the New Hampshire Real Estate Commission. A copy of the Order is attached and becomes part of the official minutes of this meeting.

FILE NO. 2002-07-03 GEORGE BRIGHAM & THE NEW HAMPSHIRE REAL ESTATE COMMISSION VS NICHOLAS KOTSONAS (DBA: METROPOLIS REAL ESTATE)

4. ITEMS FROM THE DESK OF THE EXECUTIVE DIRECTOR

RULEMAKING – The Executive Director presented the Commission with the following proposed administrative rules/changes, and requested permission to enter the initial rule proposals into the formal administrative rulemaking process.

Readopt with amendment Rea 301.02, effective 6-1-02 (Document # 7689), to read as follows:

Rea 301.02 Fees.

- (a) The applicant for each original *individual or firm* broker license and renewal thereof shall pay a fee of \$90.
- (b) The applicant for each original salesperson license and renewal thereof shall pay a fee of ~~\$65~~\$70.
- (c) The broker, ~~or~~ salesperson *or firm* shall pay a fee of \$5 for each duplicate license.
- (d) The broker, ~~or~~ salesperson *or firm* shall pay a fee of \$15 for each license amendment.
- (e) The broker, ~~or~~ salesperson *or firm* shall pay a fee of \$5 for each certificate of license and good standing.
- (f) The applicant for each qualifying examination shall pay a fee of ~~\$65~~\$100.
- (g) The broker or salesperson shall pay a fee of \$25 or 5% of the face amount of the check, whichever is greater, plus all protest and bank fees for each check, draft or money order dishonored and returned to this office pursuant to RSA 6:11-a.
- (h) The broker, ~~or~~ salesperson *or firm* shall pay a penalty fee of \$50, in addition to the regular renewal fee, for renewal of a license up to 6 months after its expiration.
- (i) Real estate course providers shall pay an evaluation fee of \$30 each time a course is submitted to the commission for accreditation or reaccreditation.
- (j) Individual real estate licensees shall pay a fee of \$10 for each course submitted to the commission to be evaluated for continuing education credit.

After review and discussion, and on motion by Commissioner HEATH, seconded by Commissioner Leroy, the Commission unanimously approved the above initial proposals for submission in the rulemaking process. A public hearing will be scheduled when this proposal has reached the point in the rulemaking process when such a hearing is required.

5. APPOINTMENT OF COMMISSION CHAIRMAIN

On a motion by Commissioner SMITH, seconded by Commissioner LeRoy, the Commission unanimously decided to re-appoint Commissioner SLATTERY as the Commission's Chairman.

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6. APPOINTMENT OF COMMISSION CLERK

On a motion by Commissioner SMITH, seconded by Commissioner LeRoy, the Commission unanimously decided to re-appoint Commissioner HEATH as the Commission's Clerk

VIII. ADJOURNMENT

Motion by Commissioner HEATH, seconded by Commissioner SMITH to adjourn the meeting. Chairman SLATTERY adjourned the meeting at 11:05 a.m.

Respectfully submitted,

*Pauline A. Ikawa*

PAULINE A. IKAWA  
Acting Clerk

GEORGE BRIGHAM & NEW HAMPSHIRE REAL ESTATE COMMISSION  
VS  
NICHOLAS KOTSONAS  
(DBA METROPOLIS REAL ESTATE)

FILE NO. 2002-07-03

This matter comes before the Real Estate Commission on the complaint of George Brigham, alleging violations of NH RSA 331-A:25-d (e); NH RSA 331-A: 26 II, IV, V, XXI, XXII, XXVIII, XXIX, XXX & XXXVI by Nicholas Kotsonas, and on the complaint of the New Hampshire Real Estate Commission through its Investigator Ann Flanagan, alleging violations of NH RSA 331-A:17, II; NH RSA 331-A:25-a, I; NH RSA 331-A:25-b; NH RSA 331-A:25-d; NH RSA 331-A:26 II, IV, V, XII, XIII, XXI, XXII, XXVI, XXVIII, XXIX, XXXI, XXXII, XXXIII, XXXVI and New Hampshire Code of Administrative Rules Rea 305.02, Rea 404.04 and Rea 701.01 by Nicholas Kotsonas. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Nicholas Kotsonas (hereinafter referred to as respondent) was licensed as a New Hampshire real estate broker on 08 July 2000, and was so licensed at the time of the alleged violations.
2. Respondent failed to appear at the New Hampshire Real Estate Commission hearing scheduled for 15 April 2003 at 9:30 a.m. (Hearing Notice with certified mail receipt, Claimant's Exhibit 1).
3. In accordance with Rea 205.11, the presiding officer declared respondent to be in default and proceeded to hear the testimony and receive the evidence offered by the parties bearing the burden of proof in the case (George Brigham and the New Hampshire Real Estate Commission).
4. Respondent subsequently contacted the Commission office by telephone at approximately 12:30 p.m. on 15 April 2003 and notified the Commission that he thought that the hearing was scheduled for the previous day 14 April 2003, and that he did not attend it because he was sick in Florida and his wife was not available to take care of him. Respondent was informed that the hearing had already taken place without his presence. The hearing had lasted from 9:45 a.m. until 10:35 a.m.
5. Respondent is a Massachusetts real estate broker who also has a New Hampshire real estate broker's license through reciprocity. He was doing business under the name Metropolis Real Estate, which was not and could not be registered and licensed

to respondent in New Hampshire because the name was already registered to another party.

6. George Brigham (hereinafter referred to as complainant) testified that he listed his single family residential property located at 7 Griffin Road, Hudson, New Hampshire for sale through respondent dba Metropolis Real Estate as seller's agent because respondent portrayed himself as an expert on foreclosure situations.

7. Mrs. Carlene Brigham testified that if their property could be sold prior to foreclosure, then the proceeds would cover the liens filed on the property, and against them personally which they would still owe personally if the property was foreclosed upon.

8. Respondent procured a buyer, Mr. Jamie Gendron, who entered into a purchase and sales agreement with complainant for \$158,000 with a closing date before complainant was going to lose the property to foreclosure.

9. Respondent indicated on the purchase and sales agreement that he was acting as dual agent, but there was no Dual Agency Consent Agreement or New Hampshire Agency Disclosure Form indicating dual agency to be signed by the buyer and seller. Respondent used a non-complying Massachusetts agency disclosure form. Respondent indicated he was a dual agent, but had no written buyer-agency agreement with the buyer.

10. Respondent set up the buyer's financing through a Massachusetts mortgage broker but the Massachusetts mortgage broker was not licensed to do the loan for a New Hampshire property, causing the buyer to have to re-apply for a loan through a New Hampshire mortgage broker.

11. Complainant testified that he believed that respondent stalled the sale and fabricated a bogus title problem to delay the closing and complainant lost the property to foreclosure, although respondent claimed that it was a "short sale".

12. Complainant testified that after his home was foreclosed upon, he had to file for bankruptcy, and subsequently suffered a heart attack.

13. Respondent purchased the property himself at the foreclosure auction for \$129,000, and then attempted to flip the property to the original buyer, Jamie Gendron whom respondent had procured for complainant, for the \$158,000 price that the buyer was willing to pay for the property from complainant.

14. Respondent submitted a forged version of the auction Memorandum of Sale by Foreclosure document (Claimant's Exhibit 5) to Dedicated Mortgage for Accredited Home Lenders, making it appear that Jamie Gendron had placed the highest bid of \$158,000 at the auction.

15. The auctioneer, Victoria Voydatach, testified that respondent was the highest bidder at the auction and that the \$129,000 version was the authentic Memorandum of Sale by Foreclosure (Claimant's Exhibit 4).

16. The auctioneer, Victoria Voydatach, testified that the \$158,000 version with Jamie Gendron as the highest bidder was a forgery (Claimant's Exhibit 5), and that Jamie Gendron was not even a registered bidder at the auction. Ms. Voydatach had not even seen the \$158,000 forged version until it was brought to her attention by the New Hampshire Real Estate Commission.

17. The auctioneer, Victoria Voydatach, testified that the size of the print is different on the two documents; the first page of the Memorandum of Sale by Foreclosure is in two different handwritings on the two documents; the dates are written out differently: one has a "Th" after the 27 which she never writes out; the auctioneer signatures are different on the two documents; and Jamie Gendron witnessed his own signature as buyer on the forged document (Claimant's Exhibit 5).

18. Other inconsistencies also noted are that the signature lines look like they have been traced over or drawn in by hand, and the signatures by the witnesses are all lighter than the rest of the document.

19. Respondent attempted to obtain a \$23,998.62 "commission" for himself which would have amounted to an almost 16% commission for respondent (Claimant's Exhibit 6), instead of the greater of 2% or \$2,500 which respondent would have received if the buyer had bought the property from complainant.

20. Attorney Mark Harmon for Bankers Trust Company noticed the "inconsistencies" and refused to allow the difference into the loan transaction (Claimant's Exhibit 3). Jamie Gendron ended up getting the property for \$129,000.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

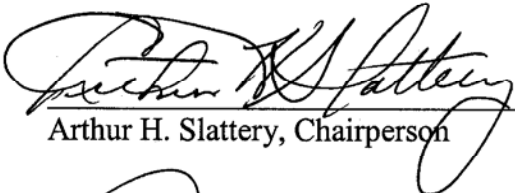
Respondent failed to appear at the scheduled hearing before the New Hampshire Real Estate Commission, and as a result was not present to offer any testimony to contradict any of the above allegations. However, the Commission did take into consideration the entire Complaint File No. 2003-07-03, which included respondent's written submissions.

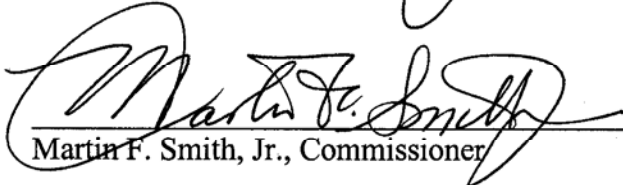
In order to do business under a trade name in the state of New Hampshire, the name of the business must first be registered with the New Hampshire Secretary of State, and in the case of a real estate business the broker must also license the name of the business with the New Hampshire Real Estate Commission. Respondent was doing real

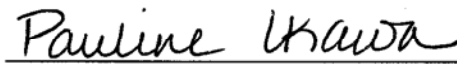
for RSA 331-A:26, XII; \$2,000 for RSA 331-A:26, XXII; \$500 for RSA 331-A:26, XXVI; \$2,000 for RSA 331-A:26, XXVIII; \$2,000 for RSA 331-A:26, XXIX; \$2,000 for RSA 331-A:26, XXXII; \$2,000 for RSA 331-A:26, XXXIII; \$2,000 for RSA 331-A:26, XXXVI; \$250 for Rea 305.02; \$250 for Rea 404.04; \$100 for Rea 701.01; for a total of \$23,850. The Commission further Orders the permanent revocation of Nicholas Kotsōnas's New Hampshire real estate license. Nicholas Kotsōnas shall surrender his real estate broker wall license and pocket ID card to the Commission immediately.

Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

Commissioner Barbara Heath evaluated this case and did not take part in the hearing or decision.

  
Arthur H. Slattery, Chairperson  
4/30/03  
DATE

  
Martin F. Smith, Jr., Commissioner  
4/30/03  
DATE

  
Pauline Ikawa, Commissioner  
4/29/03  
DATE

  
Nancy LeRoy, Commissioner  
4/30/03  
DATE